



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 14-06676
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On November 19, 2013, Applicant submitted a Questionnaire for National Security Positions (SF-86). On January 28, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be continued.

On February 19, 2015, Applicant responded to the SOR. On April 13, 2015, Department Counsel was ready to proceed. On April 20, 2015, DOHA assigned Applicant's case to me. On April 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for May 28, 2015. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant called two witnesses, testified, and offered Applicant Exhibits (AE) A through F, which were received into evidence without objection. I held the record open until June 12, 2015, to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE H through AE Q, which were received into evidence without objection. On June 5, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In her SOR answer, Applicant admitted all of the SOR allegations with explanations except for SOR ¶¶ 1.q and 1.s. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 39-year-old information system security officer employed by a defense contractor since September 2014. She seeks to retain her secret security clearance as a condition of her continued employment. Applicant has held a secret security clearance since February 2008. (GE 1; Tr. 21-24, 50-51)

Applicant graduated from high school in May 1994. She was awarded a bachelor of arts degree in communications and psychology in July 2004, and a master of science degree in management information systems in May 2010. She also began a second master of science degree in information assurance engineering and has "about four or five classes to finish a second Master's [degree]." (GE 1, Tr. 24-26)

Applicant married in May 2002, separated in 2006, and divorced in April 2007. She has sole custody of two sons, ages 12 and 10, from that marriage. Since 2012, Applicant's former husband has been serving a five-year prison sentence for drug-related charges. Her former husband's child support history was sporadic after their divorce and ceased altogether when he went to prison. Applicant did not serve in the armed forces. (GE 1; Tr. 18-19, 27-31)

Financial Considerations

Applicant's SOR lists 19 debts ranging from a \$63 cable bill collection account to a \$100,704 foreclosure deficiency balance. Nine of those debts are student loan collection accounts, which constitute Applicant's most significant financial liability. (SOR ¶¶ 1.a – 1.s)

Applicant's financial problems can be traced to her 2007 divorce and subsequent fallout that included the cost of divorce, erratic child support, and ultimately no child support as a result of her former husband going to prison. In August 2012, she was wrongfully terminated from her former employer and was unemployed three months. After being wrongfully terminated, she retained counsel and settled with her former employer. (SOR answer; Tr. 15-20)

The following summarizes the status of each SOR debt:

SOR ¶ 1.a – Mortgage foreclosure deficiency balance in the amount of \$100,704. Home sold in 2008/2009 and Applicant's latest credit reports reflect a zero balance owed. **DEBT RESOLVED.** (SOR answer; GE 4; AE M - AE O; Tr. 31-36)

SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, .1g, 1.h, 1.i, 1.k – Department of Education collection accounts for student loans in the respective amounts of \$20,369, \$15,080, \$13,930, \$13,130, \$11,753, \$9,678, \$5,391, \$3,919, and \$1,971. One-third of Applicant's student loans have been rehabilitated and are in forbearance as a result of her having made payments on them. Applicant has submitted the required paperwork to rehabilitate the remainder of her student loans and is awaiting a decision. **DEBTS BEING RESOLVED.** (SOR answer; AE J, AE K, AE L; Tr. 36-39)

SOR ¶ 1.j – Charged-off credit card account in the amount of \$3,315. Applicant provided evidence that she has been engaged in an ongoing good-faith effort to resolve this account. **DEBT BEING RESOLVED.** (SOR answer; Tr. 39-40)

SOR ¶ 1.l – Charged-off credit card account in the amount of \$1,023. Applicant has made payment arrangements with this creditor and is current on this account. **DEBT BEING RESOLVED.** (SOR answer; AE E; Tr. 40-41)

SOR ¶ 1.m – Charged-off credit card account in the amount of \$842. Applicant has made payment arrangements with this creditor and is current on this account. **DEBT BEING RESOLVED.** (SOR answer; AE F; Tr. 41)

SOR ¶ 1.n – Credit card collection account in the amount of \$709. Applicant has made payment arrangements with this creditor and is current on this account. **DEBT BEING RESOLVED.** (SOR answer; AE G; Tr. 41-43)

SOR ¶ 1.o – Credit card collection account in the amount of \$582. Applicant has made payment arrangements with this creditor and is current on this account. **DEBT BEING RESOLVED.** (SOR answer; AE F; Tr. 41-43)

SOR ¶ 1.p – Past-due medical bill in the amount of \$539. Applicant has filed an on-line dispute challenging the amount owed, and results are pending. **DEBT BEING RESOLVED.** (SOR answer; Tr. 43-44)

SOR ¶ 1.q – Charged-off credit card account in the amount of \$6,652. Applicant did not recognize this debt and filed an on-line dispute challenging its validity, and the debt no longer appears on her credit report. **DEBT RESOLVED.** (SOR answer; GE 2, GE 4; AE M – AE O; Tr. 44-46)

SOR ¶ 1.r – Collection credit card account in the amount of \$11,263. This is a credit card debt that arose during Applicant’s previous marriage. Applicant provided evidence that she has been engaged in an ongoing good-faith effort to resolve this account. **DEBT BEING RESOLVED.** (SOR answer; Tr. 46-47)

SOR ¶ 1.s – Collection cable company account in the amount of \$63. Applicant did not recognize this debt and filed an on-line dispute challenging its validity, and the debt no longer appears on her credit report. **DEBT RESOLVED.** (SOR answer; AE M – AE O, Tr. 47-48)

Applicant retained the services of a financial counselor, who submitted a letter outlining a comprehensive strategy for Applicant to regain financial responsibility. Applicant’s financial counselor reported that Applicant has followed her recommendations to include signing up for a credit monitoring service. (Tr. 48-50; AE K, AE Q) Applicant’s monthly budget reflects that she had a net monthly remainder of \$1,560, leads a modest lifestyle, and is living within her means. (Tr. 51-56; AE P)

Character Evidence

Applicant submitted three reference letters from professional and personal sources, and a recent performance evaluation. The collective sense of these documents is very favorable regarding her character, work performance, reliability, and accomplishments. (Tr. 54-55; AE A – AE D) Applicant also volunteers with a non-profit organization that develops well-rounded athletes. She participates with this organization as a parent primarily to ensure that her two sons have a positive role models and a constructive outlet while their father is in prison. (Tr. 58-62)

Applicant’s two witnesses provided very favorable comments regarding her character, work ethic, honesty, and reliability. Both witnesses hold active security clearances and recommended that Applicant’s security clearance be continued. (Tr. 63-73)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to

grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated.

Her debt is a “continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and her behavior does not cast doubt on her current reliability, trustworthiness, or good judgment.

Full application of AG ¶ 20(b) is warranted. Applicant experienced a costly divorce and a wrongful termination. Furthermore she could not have foreseen that her husband would be sent to prison after their divorce and that she would be solely responsible for supporting her two sons. During this time, Applicant remained in contact with her creditors; however, was unable to repay them because she simply did not have the money.

AG ¶¶ 20(c), 20(d), and 20(e) are fully applicable. Applicant retained the services of a financial counselor, who has provided her with specific recommendations to regain financial responsibility. Those recommendations include contacting her creditors and setting up payment plans, or disputing debts that are either incorrect or not valid. Apart from her SOR debts, Applicant is current on her other debts. She has either sufficiently explained, resolved, or refuted her remaining debts.¹

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

¹“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether she maintained contact with her creditors and attempted to negotiate partial payments to keep her debts current.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's seven years of employment in the defense industry weighs heavily in her favor. She is a law-abiding citizen and a productive member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant's debts have either been or are being resolved. Due to circumstances beyond her control, her debts became delinquent. Despite her financial setback, it is clear from Applicant's actions that she is on the road to a full financial recovery. While her financial situation is not ideal, Applicant's efforts to date demonstrate that she is doing her level best to regain financial responsibility. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered the circumstances that led to her financial difficulties, her ongoing financial recovery, the steps she has taken to resolve her financial situation, her potential for future service as a defense contractor, the mature and responsible manner in which she dealt with her situation, her reference letters, and her testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the

whole person, I conclude she has mitigated the financial considerations security concerns.

Applicant understands what she needs to do to establish and maintain her financial responsibility. Her efforts at debt resolution have established a “meaningful track record” of debt re-payment. I am confident she will resolve her remaining debts and maintain her financial responsibility.²

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to s: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Clearance is granted.

Robert J. Tuidor
Administrative Judge

²Of course, the Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that this Applicant’s security clearance is conditional.